

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

LINDA SHOPE,

Plaintiff,

v.

COSTCO WHOLESALE CORP.,

Defendant.

* * * * Case No. RWT 17-cv-0608

MEMORANDUM OPINION AND ORDER

On February 16, 2017, Plaintiff filed a Complaint in the Circuit Court for Prince George's County, Maryland alleging that Defendant's negligence caused her to slip and fall on a wet piece of cardboard in one of its warehouses, causing her personal injury. ECF No. 2. She claimed both compensatory and punitive damages for the alleged negligence. *Id.* On March 2, 2017, Defendant removed the case to this Court [ECF No. 1] and filed a Motion to Dismiss Plaintiff's punitive damages claim pursuant to Federal Rule of Civil Procedure 12(b)(6) [ECF No. 5]. To date, Plaintiff has filed no response.

The purpose of a motion to dismiss under Rule 12(b)(6) is "to test the sufficiency of a complaint." *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). Rule 8 "requires a 'showing,' rather than a blanket assertion, of entitlement to relief." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 n.3 (2007). To survive a motion to dismiss, a complaint must put forth "plausible claim[s] for relief." *Francis v. Giacomelli*, 588 F.3d 186, 192 (4th Cir. 2009). While the court "must take all factual allegations as true," it is "not bound to accept as true a legal conclusion couched as a factual allegation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citation and quotation marks omitted). And "where the well-pleaded facts do not permit

the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

In order to state a claim for punitive damages in a non-intentional tort action, a plaintiff must establish that the “defendant’s conduct was characterized by evil motive, intent to injure, ill will, or fraud, *i.e.*, ‘actual malice.’” *Owens-Illinois, Inc. v. Zenobia*, 601 A.2d 633, 652 (Md. 1992). Nothing in Plaintiff’s complaint even hints at actual malice on the part of Defendant. Rather, she alleges only that Defendant “fail[ed] to use ordinary care to ensure that there was adequate notice of the dangerous condition caused by a wet piece of card board on the floor” and failed to give reasonable notice to Plaintiff that the dangerous condition existed. ECF No. 2 ¶ 5. This does not suffice to support a claim for punitive damages. Accordingly, it is, this 25th day of May, 2017, by the United States District Court for the District of Maryland,

ORDERED, that Defendant’s Motion to Dismiss Plaintiff’s punitive damages claim [ECF No. 5] is hereby **GRANTED**; and it is further

ORDERED, that Plaintiff’s Complaint [ECF No. 2] is hereby **DISMISSED IN PART** insofar as it seeks punitive damages.

/s/
ROGER W. TITUS
UNITED STATES DISTRICT JUDGE